

also points out, distinct from the facts of those cases. In the Calcutta cases there were specific allegations that the decree had been obtained by fraud and the execution proceedings which followed were similarly tainted with fraud. In the case out of which this appeal has arisen the only real fraud alleged is connected with the non-service of summons. This has already been fully gone into and decided against the appellant in the application which he filed under section 108 of the Code of Civil Procedure. We dismiss the appeal with costs.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

CHHITAR MAL (PLAINTIFF) v. JAGAN NATH PRASAD AND ANOTHER
(DEPENDANTS).*

Guardian and minor—Contract—Specific performance—Specific performance of contract not favourable to minor refused.

The certificated guardian of a minor, finding that it was necessary that some of the minor's property should be sold, applied for permission to the District Judge, who sanctioned the sale for a price of Rs. 725. Subsequently the guardian discovered that this was an inadequate price, and having received an offer of Rs. 825 for the property, went again to the District Judge for sanction to the second contract, obtained sanction and sold the property for Rs. 825. *Held* that the former contract being to the detriment of the minor could not be specifically enforced.

THE facts out of which this appeal arose are as follows:—

One Musammat Misri, the certificated guardian of her minor son Sanwalia, found it necessary to sell certain property belonging to the minor. She got an offer of Rs. 725 from Chhitar Mal, and obtained the sanction of the District Judge for the sale of the property to Chhitar Mal at that price. It was afterwards found that this price was inadequate, and on another offer of Rs. 825 being made by one Jagan Nath Prasad, Musammat Misri again applied to the District Judge for sanction to sell to Jagan Nath. The property was offered to Chhitar Mal at Rs. 825, but he refused to give so much, and the property with the sanction of the District Judge was sold to Jagan Nath. Chhitar Mal then

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* Second Appeal No. 932 of 1905, from a decree of Babu Khettar Mohan Ghose, Additional District Judge of Aligarh, dated the 29th of July 1905, confirming a decree of Babu Jagat Narayan, Munsif of Koil, dated the 5th of May 1905.

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brought a suit for specific performance of the agreement to sell to him. The Court of first instance (Munsif of Koil) dismissed the suit, and this decree was affirmed on appeal by the Additional District Judge of Aligarh. The plaintiff appealed to the High Court.

Dr. *Satish Chandra Banerji* and *Munshi Gulzari Lal*, for the appellant.

Babu Durga Charan Banerji, *Munshi Lakhsmi Narain* and *Munshi Girdhari Lal Agarwala*, for the respondents.

STANLEY, C. J., and BURKITT, J.—This is a suit by the plaintiff appellant for enforcement of an alleged contract of sale of property for the sum of Rs. 725 entered into between him and one Musammat Misri, mother and certificated guardian of Sanwalia. The facts are that it apparently became necessary to sell portion of the minor's property. The mother and certificated guardian would seem to have obtained an offer from the plaintiff appellant of Rs. 725 for the purchase of that property. She thereupon applied to the Judge, under the provisions of the Guardians and Wards Act of 1890, for permission to sell the property described in her application for the sum of Rs. 725. An order was passed by the Judge sanctioning the sale; but, strange to say, the name of the vendee does not appear in the Judge's order. Before many days had passed the Judge would seem to have received information that the property had been sold too cheaply, and that the defendant respondent, Jagan Nath Prasad, was willing to give Rs. 825 for it. The District Judge caused this offer to be communicated to the plaintiff and offered the property to him at Rs. 825. He, however, refused to purchase at that price. The Judge thereupon sanctioned the sale to the respondent Jagan Nath. A sale-deed was duly executed and registered and the purchase money paid. This suit has now been instituted by the plaintiff appellant Chhitar Mal for specific performance of the alleged agreement between him and the minor's certificated guardian to sell to him the property in suit for the sum of Rs. 725. Both the lower Courts have dismissed the claim.

In appeal the argument chiefly advanced by the learned advocate for the appellant was that there was no power in the Judge to cancel his order sanctioning the sale for Rs. 725 and to accept

the respondent's offer at a higher figure. We do not think it necessary to go into the question as to whether or not the District Judge had power to act as he has done. It seems to us that the question does not arise. We think that the principle on which we should act in this case is the principle that a Court will never enforce specific performance against a minor when such enforcement is to his detriment. Here it is manifest, that, if the plaintiff appellant succeeds, the result will be the loss of at least a hundred rupees to the minor. We think that Courts in this country, as in England, will not allow a bargain made by an improvident guardian to be enforced against the interests of the minor, if it be shown to be a bargain made to the detriment of the minor. Here there can be no doubt whatever that by her bargain the mother did not obtain the full value of her son's property. Therefore for that short reason, without going into any other considerations, we think that this appeal fails and must be dismissed with costs. We order accordingly.

Appeal dismissed.

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CHHITAR
MAL
v.
JAGAN
NATH
PRASAD.

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December 7.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir George Knox.

SUNDAR LAL AND OTHERS (PLAINTIFFS) v. CHHITAR MAL AND OTHERS (DEFENDANTS).*

Hindu Law—Joint Hindu family—Redemption of mortgage—Suit by father dismissed—Subsequent suit by sons.

A joint Hindu family, consisting of father and sons, were co-mortgagors by way of usufructuary mortgage of joint family property. The father sued for redemption, but was unsuccessful. Held on suit by the sons claiming to redeem the whole mortgage, that the sons were not precluded by reason of the result of their father's suit from suing to redeem, but they could not obtain redemption of more than their own shares.

THE facts of this case will be found reported in I. L. R., 29 All., 1, also in the Weekly Notes for 1906, at p. 242.

Babu Jogindro Nath Chaudhri, Babu Sarat Chandra Chaudhri and Munshi Kedar Nath, for the appellants.

The Hon'ble Pandit Sundar Lal and Babu Durga Charan Banerji, for the respondents.

* Second Appeal No. 340 of 1905 from a decree of A. B. Bruce, Esq., District Judge of Agra, dated the 3rd of February 1905, confirming a decree of Babu Rajnath Prasad, Subordinate Judge of Agra, dated the 7th of July 1904.